STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN RODRIGUEZ LOWE,

Defendant-Appellant.

UNPUBLISHED
July 13, 2010

No. 292134
Oakland Circuit Court
LC No. 2008-222937-FC

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of armed robbery following a bench trial. We affirm.

Defendant challenges the sufficiency of the evidence supporting his conviction. We review the evidence de novo, in the light most favorable to the prosecution, in order to determine whether the essential elements of the crime were proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (citation omitted). "All conflicts with regard to the evidence must be resolved in favor of the prosecution." *Id.* (citation omitted).

The elements of unarmed robbery are: "(1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed." *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). See MCL 750.350.[1]

We conclude that there was sufficient evidence presented at trial to enable a rational trier of fact to conclude, beyond a reasonable doubt, that defendant committed unarmed robbery.

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[1] MCL 750.530(1) provides:

> A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

Viewing the evidence in the light most favorable to the prosecution, the victim's testimony established that defendant confronted him on the street while opening and closing a box cutter, then asked to use his telephone. Although the victim voluntarily gave his telephone to defendant when asked, the record supports that defendant feloniously took the victim's telephone during a second encounter. Defendant had returned the victim's telephone and the victim was walking away when Marcus Adams and defendant came up behind him, threw him onto the hood of a car, and defendant grabbed the telephone from the victim's hand as he was held to the car.[2] The victim did not give defendant permission to take his telephone, and he was scared. The victim indicated that defendant was mad throughout the encounter and continually intimidated the victim and questioned him whether he had been in a bar earlier that night. Defendant claimed to have been "jumped" by several men in the bar, and he forced the victim to go into the bar. Defendant ultimately did not return the telephone to the victim. Instead, the victim saw defendant hand the telephone to Adams, and defendant lied and told the victim that he had dropped it. Defendant and Adams then walked away. The police later found the telephone on Adams.

Although defendant argues that the victim gave different versions of events in his testimony at trial and on previous occasions, we must view the evidence in the light most favorable to the prosecution and resolve any conflicts in the evidence in favor of the prosecution. *Wilkens*, 267 Mich App at 738. Further, the trial court concluded that the victim was the more credible witness, and we defer to the trial court's determination regarding witness credibility. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

Defendant also challenges the sufficiency of the identification evidence. In this case, there was no real dispute at trial that defendant was the individual who approached the victim. The victim described defendant and Adams to police, and identified them at the scene. He testified defendant took his telephone. "[P]ositive identification by witnesses may be sufficient to support a conviction of a crime." *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Additionally, defendant admitted that he encountered the victim along the street that night.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Alton T. Davis

[2] The victim did not see the box cutter the second time defendant took possession of his telephone.